

Chickasaws, Tribal Laws, and the Mississippi
Married Women's Property Act of 1839

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Dedication

I'd like to dedicate this thesis to my grandfather, James E. Gilmer Sr. He grew up in Toccopola, Mississippi, where many of the individuals in the *Fisher v. Allen* lawsuit lived during the 1830's. In 1933, when he was nine years old he helped a crew of local high school boys move Elizabeth Allen's remains from an old overgrown Chickasaw burial ground to what they considered a more suitable location for a woman who's life had such profound repercussions. As Megan Benson notes in the introduction to her essay "Fisher v. Allen: The Southern Origins of the Married Women's Property Acts," removing the remains of a Native American from their tribe's burial ground would be considered inappropriate today. However, those who took part in the reburial had nothing but the noblest intentions of honoring this important figure in Chickasaw and United States history. He passed away on November 8, 2003, less than two weeks before this thesis was completed.

What do a slave named Toney, death threats, Chickasaw tribal law, and husbands who do not pay their debts have to do with giving women the right to own property separately from their husbands? All of these diverse factors contributed to a Mississippi State Supreme Court case in 1837, which was followed two years later by the passage of the Mississippi Married Women's Property Act of 1839. The intent of this research is to demonstrate the connection between the *Fisher v. Allen* case and the passage of the Married Women's Property Act of 1839. Once that link has been established, the laws and customs of the Chickasaw People, which were the basis for the ruling in 1837, need to be given proper recognition as the model used by American lawmakers to enact the first legislation that protected married women's property from the debts of their husbands in a common law state.

While scholars have acknowledged the significance of the 1839 act, the Chickasaw custom that it originated from has been largely ignored. James and Elizabeth Love Allen used this custom to provide a debt-shelter for their property, protecting it from James's outstanding debts. Members of the Mississippi legislature appear to have followed the Allen's example by adopting part of the Chickasaw marital customs to create debt-shelters for themselves. The 1839 Married Women's Property Act did protect a married woman's property from her husband's debt, but their husbands retained full legal control of their property.¹ By examining the origins of the *Fisher v. Allen* case, the 1839 act, and the context in which both occurred, a

¹ *Laws of Mississippi*, 1839, Chapter 46, section 4, 73. Jackson, MS. Mississippi Department of Archives and History. Roll #2502

story of exploitation, greed, and the unintentional expansion of women's property rights emerges.

Sometime before 1805, James Allen and Elizabeth Love Allen were married on Chickasaw lands under the customs of the Chickasaw tribe.² Elizabeth Love Allen was the daughter of Thomas Love, a British Loyalist who fled to the Chickasaw Nation after Britain's defeat in the American Revolutionary War. Thomas Love married Chickasaw tribal member Sally Colbert, thus gaining admission to the Chickasaw tribe (and its most powerful family) and a legal right to reside on Chickasaw lands. Love was one of many British Loyalists who opted to settle amongst the Chickasaws at the end of the war to avoid living under American law. Arrell Gibson describes James Gunn, one of the more "colorful" members of this group, who "allowed no idleness or celebration on his premises on the Fourth of July, and to his dying day he celebrated the birthday of King George III."³

Thomas and Sally left their daughter with land and several slaves, including one named Toney.⁴ Elizabeth Allen deeded the slave named Toney to her daughter Susan on November 14, 1829.⁵ Also in November of that year a man named Alexander Malcom filed a lawsuit against James Allen claiming that he owed

² Kerry M. Armstrong, "Was it James or John Allen?" *Chickasaw Historical Research Web site*, n. d., <www.flash.net/~kma/allen.htm>, (13 September 2003), 5.

³ Arrell M. Gibson, *The Chickasaws*. (Norman, Oklahoma: University of Oklahoma Press, 1971), 140.

⁴ Armstrong, 6.

⁵ *Deed of Gift* from Betsy Love to Sally Allen and Others, 14 NOV 1829. [Deed Book #2, Ponotoc Co., MS, pp. 196-7] <http://www.flash.net/~kma/bllove.htm> (13 September 2003).

Malcom five thousand pounds of North Carolina state currency for defaulting on a contract signed by the two in October 1784. Allen had agreed to give Malcom the deed to a tract of land in the Appalachian Mountains in Tennessee in exchange for the five thousand pounds of North Carolina currency, but apparently took the money and never gave Malcom the deed for the land.⁶ Mississippi passed legislation in 1830 extending its jurisdiction over the Chickasaws⁷, until that time Malcom could not file charges against Allen because he resided within the jurisdiction of the Chickasaw Nation and was thus exempt from state law⁸.

In response to the lawsuit Allen hired a local attorney named John Fisher to defend him in the Malcom suit. Allen wrote a promissory note to Fisher in September of 1830 promising to pay Fisher two hundred dollars by November first of 1830 for his services. According to one historian, the *Deed of Gift* from Elizabeth Love Allen to her children may actually have been made around this time. Fisher, serving as Allen's attorney and Justice of the Peace, may have forged the date so that the gift took place before the extension of Mississippi law, thereby bypassing the issue of whether or not Elizabeth would have had the right execute the deed under Mississippi law. This would explain why the witnesses did not sign the deed until the 2nd of November 1830, almost a year after it was reportedly made. In addition, Elizabeth's

⁶ *Alexander Malcom v. Debt James Allen*. April 1st, 1830.

<http://www.flash.net/~kma/fisher.htm> (13 September 2003).

⁷ *Fisher v. Allen*, January term, 1837. 2 Howard, 612. Jackson, MS. Mississippi Department of Justice, Supreme Court Library.

⁸ American State Papers, Senate, 19th Congress, 2nd session Indian Affairs: Volume 2, page 723. <http://memory.loc.gov/cgi-bin/ampage> (15 September 2003).

maiden name Love was used, possibly to further shield her property from James's debts.⁹ This fraudulent act later backfired on John Fisher when James Allen failed to pay him the two hundred dollars, leading him to file another lawsuit against his former client.¹⁰ Fisher tried the suit himself, in which he claimed:

James Allen, ...contriving and fraudulently intending craftly and subtly to deceive and defraud the plaintiff in this behalf hath not as yet paid to the said plaintiff the said sum of two hundred dollars (although often requested to do so but to pay the same or any part thereof he has hither wholly failed and refused and still fails and refuses so to do... and therefore he sues.¹¹

The court record shows that according to Fisher, Allen failed to pay either part or the whole of the sum, indicating that he may never have intended to pay for Fisher's services in the first place.

This created the first *Fisher v. Allen* trial that was set to begin on May 3rd, 1831. James Allen failed to appear in court that day and due to his absence, the judge ruled in favor of Fisher for \$208.08 and an additional charge of \$23.24 against Allen to cover the court costs.¹² Using the court's judgment against Allen, Fisher filed a *Writ of Execution* ordering the Sheriff of Monroe County to seize and sell any property belonging to James Allen to cover the judgment. The Sheriff, John Dexter, took the slave Toney to be sold at public auction to pay for Allen's debt to Fisher.¹³ James's son George Allen filed suit against Fisher on behalf of his minor sister Susan

⁹ Armstrong, 5.

¹⁰ Armstrong, 5.

¹¹ *Fisher v. Allen*, Circuit court May term 1831, Monroe Co., MS, Court Journal [Journal is not marked.] <http://www.flash.net/~kma/Fisher.htm>. (13 September 2003).

¹² *John Fisher v. James Allen*, Circuit court Tuesday 3rd May 1831, Monroe Co., MS, Court Journal [Journal is not marked.] <http://www.flash.net/~kma/Fisher.htm>. (13 September 2003).

¹³ Armstrong, 5-6.

Allen, claiming that the slave Toney was in fact her property and not that of her father.¹⁴ On November 10th, 1831 George Allen and James Colbert (Susan's great-uncle) agreed to jointly post a six hundred and fifty-dollar bond in order to return the slave Toney to Susan Allen until a jury returned a verdict in the case. If the jury ruled in favor of Fisher, Allen and Colbert would be held liable for the bond if Toney were not returned to Fisher.¹⁵

Under every state and national common law system during that time, the slave Toney would have been eligible to be used to repay the debts of Elizabeth Allen's husband. However, this situation was different than most in Mississippi or any other common law state at that time because the Allens were married under Chickasaw law, which protected a wife's property from the debts incurred by her husband. The case first went to the Monroe County Court, whose jurisdiction was extended over the Chickasaw territory in 1830, which ruled in favor of Susan Allen, stating:

This day came the jury in this cause who upon their oaths doth say they find for the defendant. It is therefore considered by the court that the defendant go hence and recover of the plaintiff the cost in this cause expended and it is further ordered by the court that the defendant be permitted to charge the attendance of Benjm. Love only in the taxation of the cost in this cause as his witness....¹⁶

The fact that the courts ordered Fisher to pay for the costs involved in having Benjamin Love present as a witness indicates he testified as to the Chickasaw laws

¹⁴ *John Fisher v. Inter Susan Allen*, June 25, 1831, Monroe Co., MS, [unmarked court journal, pp. 106-08.] <http://www.flash.net/~kma/Fisher.htm>. (13 September 2003).

¹⁵ *John Fisher v. Inter Susan Allen*, Circuit Court towit November Term 1831, Monroe Co., MS, [unmarked court journal, pp. 106-08.] <http://www.flash.net/~kma/Fisher.htm>. (13 September 2003).

¹⁶ *Ibid.*, 106.

regarding the property rights of married women.¹⁷ Love, who was likely a close relative of Elizabeth Love Allen, served as an interpreter for the Chickasaws and as a delegate for the Chickasaws during the 1834 Treaty negotiations.¹⁸ His role as an intermediary between Chickasaw and Euro-American culture makes him a logical choice to serve as a witness of Chickasaw customs.

Fisher later appealed to the Mississippi Supreme Court, where Justices William L. Sharkey and P. Cotesworth Smith handed down separate decisions in January of 1837 ruling in favor of Susan Allen. The court records indicate that two main questions were brought before the court: “1. Whether, under the laws of this state, Allen, by his marriage with Betsy Love, acquired such an interest in her property, as to subject it to the claims of his creditors. 2. Whether the gift to Susan Allen was void, as to persons having claims against Allen.”¹⁹ Fisher “contended that the jurisdiction of the state attached to every individual within its limits, and that consequently, the marriage contract, whether between Indians or its white inhabitants,

¹⁷ Armstrong, n. 31, 8-9.

¹⁸ *United States Treaty with the Chickasaws-1834*. www.flash.net/~kma/t12.htm (3 November 03). The 1834 treaty was sought by the Chickasaws to alter the terms of the treaty of 1832. The 1832 treaty marked the Chickasaws' agreement to move to part of the Choctaw reservation in what is now Oklahoma. The Treaty also detailed how the Chickasaw lands would be allotted and sold at auction. This was what the 1834 treaty sought to amend; granting allotments to orphans and others that were previously not included in the allotment plans. The 1834 treaty also provided coverture for Chickasaw women during the removal process to protect them from deceitful land speculators, which was overturned by the *Fisher v. Allen* ruling.

¹⁹ *Fisher v. Allen*, January term, 1837. 2 Howard, 612. 1837.

would be controlled by its laws. And that jurisdiction commenced in 1799, immediately upon the organi[z]ation of the territorial government.”²⁰

Judge Smith stated in a separate opinion that James Allen acquired no right to Betsy Allen’s property because “It does not appear that the marriage between Allen and Betsy Love took place under the territorial government; it is therefore unnecessary to inquire whether congress was vested with the power to subject the individuals composing the Chickasaw nation...” to the laws of the state of Mississippi.²¹ Smith goes on to say that once Mississippi was inducted into the Union and granted the sovereign power of a state, it had a right to enforce its obedience on all persons within its borders, but did not do so in regards to the Chickasaws and Choctaws until it absorbed their territories in 1830. At that time Mississippi agreed to abide by “all marriages and matrimonial connections entered into by virtue of any custom or usage of the said Indians, and by them deemed valid and obligatory as if the same had been solemniz[ed] according to the laws of the state.”²² Smith stated that by following Fisher’s argument, the case would violate the constitutional rights of Elizabeth Allen, saying that:

“...to give it such an interpretation as would confer upon him ownership, would work a divestiture of her rights. It was the intention of the legislature to extend to these persons the full protection of the law; they were made members of the civil community. It was not the intention of the legislature, nor could they, if they had so intended, violate the sanctity of private property;”

²⁰ Ibid., 613.

²¹ Ibid., 613.

²² *Mississippi Law Code*, Acts of January Session, 1830, page 6, section 4, as quoted in *Fisher v. Allen*,

2 Howard 613-4.

Because of this, he ruled that the second question was irrelevant and thus found in favor of Susan Allen, upholding the lower court's verdict.²³

Two years after the Mississippi Supreme Court handed down its decision in the *Fisher v. Allen* case, an act providing for the protection of married women's property was introduced into the state legislature. State Senator Thomas B.J. Hadley submitted the bill entitled "An Act for the Protection and Preservation of the Rights and Property of Married Women" in 1839. While a handful of historians have written about the *Fisher v. Allen* trial and its connection to the passage of the 1839 Married Women's Property Act, many questions remain to be answered.

Megan Benson, while a Ph.D. candidate at the University of Oklahoma, discussed both the *Fisher v. Allen* trial and the passage of the 1839 act, crediting the case with giving the common law precedent needed to pass the bill that otherwise would have been "too innovative."²⁴ Benson focused primarily on the motives behind justices Smith and Sharkey's ruling in favor of the Allen's. Benson states that Chickasaw women needed to have control of their separate property in order for the sales of Chickasaw lands and the Chickasaw removal, to occur quickly and easily. Chickasaw matrilineal customs dictated that women were the primary landholders within the Chickasaw Nation, and because of this tradition, Mississippians needed them to be able to consent to sell their lands on their own, without first receiving permission from a male relative or tribal leader.²⁵ The *Fisher v. Allen* decision, by

²³ Ibid., 614.

²⁴ Megan Benson "Fisher v. Allen: The Southern Origins of the Married Women's Property Acts." *Journal of Southern Legal History*. (1997-98) 112.

²⁵ Ibid., 105-6.

upholding Elizabeth Allen's right to donate the slave Toney to her daughter without first obtaining the permission of her husband, gave Chickasaw women the right to sell their lands without the protection of coverture.

Kerry M. Armstrong is a Chickasaw and historian who has published at least three volumes of Chickasaw historical documents in addition to operating the Chickasaw Historical Research Web Site. He cleared up much of the confusion surrounding the origins of the *Fisher v. Allen* case in the essay "Was it James or John Allen?" Armstrong convincingly argued that the financially troubled husband of Elizabeth Allen was in fact James Allen and not John Allen, another white man who lived among the Chickasaws during that time. He traced the growth of this misunderstanding from early court records to books on Mississippi and Chickasaw history to a historical marker in Mississippi which all inaccurately claim that John Allen was the husband of Elizabeth "Betsy" Allen. Armstrong shows how easy it was for early historians to confuse "John Allen who marries a daughter of General William Colbert named Margaret, hence Margaret Allen, with James Allen who marries a sister of William Colbert who has a daughter named Margaret Allen. Both men are from North Carolina, and both men apparently settled among the Chickasaws within a few years of each other."²⁶ While Armstrong's work clarified a number of issues in the *Fisher v. Allen* case that were missed by earlier historians, he did not address the Married Women's Property Act of 1839.

While a graduate student at the University of Southern Mississippi Sandra Moncrief argued that the passage of this act was largely due to the work of Senator

²⁶ Armstrong, 3.

Hadley's wife, Piety Smith Hadley, who ran a boarding house in the fast growing capitol of Jackson, Mississippi. There was a shortage of housing in the city, so many influential politicians stayed at the boarding house when the legislature was in session. Piety used her position to encourage these politicians to vote the way she wanted them to on certain issues by serving them "short rations and traditional hash" and giving them "no comfort until they came around to her way of thinking" if they refused to vote the way she wanted them to.²⁷

Moncrief further argued that Piety had two possible motives for encouraging the passage of this act. In June of 1831 Piety and Thomas Hadley were married and her father added to his will, leaving two slaves and some land to his daughter under the protection of her brothers. Moncrief suggests that Thomas Hadley was under financial strain during the time surrounding the 1839 act and had possibly been involved in some "dubious dealings" along with his brother-in-law, former Mississippi Governor Hiram G. Runnels, contributing to his financial concerns. Moncrief believes that the Hadleys may have encouraged the passage of the bill in order to protect Piety's inheritance from her husband's creditors.²⁸ Another theory put forth by Moncrief is that the Hadleys may have wanted to take control of Piety's inheritance away from her brothers so they could sell it and use the money to move to Texas, something that they, along with the Runnels family, did sometime in 1840 or 1841.²⁹

²⁷ Sandra Moncrief, "The Mississippi Married Women's Property Act of 1839." *Journal of Mississippi History* 47. no. 2(1985): 115.

²⁸ *Ibid.*, 116-9.

²⁹ *Ibid.*, 123.

Sandra Moncrief credits the 1839 act with influencing the passage of similar acts over the next few decades. Maine and Michigan were the next two states to pass married women's property laws in 1845. She believes that the similarities between the wording of the Mississippi act and the Maine act suggest that Maine legislators may have actually copied the act from newspapers that began circulating the law in 1840. She describes the laws as being "strikingly similar in content, except for the slavery clauses."³⁰ Moncrief also notes the irony that "in shielding themselves economically, Mississippi men were advancing women's rights," something that appeared to be the case in many of the other married women's property acts that were enacted over the next few decades.³¹ While Moncrief discussed both the *Fisher v. Allen* trial and the Married Women's Property act, she does not offer or imply any connection between them.

Legal scholar Judith T. Younger examines the development of marital laws in her essay "Marital Regimes: A Story of Compromise and Demoralization, Together with Criticism and Suggestions for Reform." Younger examines the facts surrounding the *Fisher v. Allen* case and wrote that "Two years later, the Mississippi legislature extended *Fisher v. Allen* to include all Mississippi wives by enacting a Married Women's Property Act."³² While Younger credits *Fisher v. Allen* for being the basis of the 1839 act, she did not demonstrate the connection between the two.

³⁰ Ibid., 125.

³¹ Ibid., 125.

³² Judith T. Younger, "Marital Regimes: A Story of Compromise and Demoralization, Together with Criticism and Suggestions for Reform." *Cornell Law Review* 67, no. 1(1981): 61.

In order to demonstrate how the *Fisher v. Allen* case influenced the passage of the 1839 Married Women's Property Act, a number of issues will need to be discussed. The influence and connections of the Allen and Colbert families need to be established. Next, the relationship between the Hadley's and the Colberts demonstrates that the Hadleys had personal reasons to be interested in the *Fisher v. Allen* suit. Then, James and George Allen's actions surrounding the treaty negotiations between the Chickasaw and the United States during the late 1820's suggest a ruthless effort to evade American legal jurisdiction by exploiting their membership in the Chickasaw Nation. The legislative records surrounding the passage of the 1839 suggest that the Mississippi legislature may have followed Allen's example of exploiting Chickasaw tribal law. By extending part of that law to all Mississippi women they created a shelter to protect property from debt collectors.

The influence and character of the Allen family, and perhaps more importantly, their relationship to the Colbert family, offer insight into James Allen's repeated failure to pay his debts and the influence the *Fisher v. Allen* lawsuit may have had on Mississippi lawmakers. The Colbert family's influence over the Chickasaw Nation began at the turn of the nineteenth century. According to Arrell Gibson, the Colberts had effectively taken over control of the Chickasaw government by 1800. During the 1801 negotiations between the Chickasaws and the federal government, the Chickasaw council granted George Colbert authority to speak on their behalf.³³ The Colbert family continued to use its position as cultural

³³ Gibson, 99.

intermediaries to their own advantage by steadily taking over control of the nation.

Gibson continued to say:

So successful was this Colbert led clique, that by 1830 the Chickasaw nation was in fact their commercial fief. They operated the best farms and plantations in the nation with slave labor. This alone would have made them wealthy, but they strove to integrate all the nation's productive enterprises under their proprietorship. They prospered from farming, stock raising, and shipping, but their greatest profits came from their mercantile business. Getting what they desired from the Chickasaw government was perfunctory since they ran it.³⁴

Elizabeth and James Allen were both highly connected to the Colbert family.

Elizabeth Allen's mother Sally was the daughter of James Logan Colbert,³⁵ the father of the six Colbert brothers who would grow to dominate the Chickasaw nation:

William, George, Levi, Samuel, Joseph, and Pittman (James).³⁶ Malcom McGee, the main interpreter for the Chickasaws, spoke of James Logan Colbert in an interview he gave to historian Lyman Draper in 1841. According to Draper's notes, McGee said that "James Colbert was a native of one of the Carolina's, probably S.C. and came into the Chickasaw Nation prior to 1750, was adopted into an Indian family, sometime afterwards became a trader and made property, took a wife, and had several children- six sons and two daughters." He goes on to say that he did not think Colbert was made a chief, but that "he was a commanding influence among them- could speak their tongue fluently- and became a through Indian himself."³⁷ James Allen,

³⁴ Ibid., 150.

³⁵ Armstrong, 6.

³⁶ Gibson, 65.

³⁷ Malcom McGee, interviewed by Lyman Draper, approximately 1841.

<http://www.flash.net/~kma/Mcgee.htm>. (25 September 2003).

also a Carolinian (though from North Carolina),³⁸ married Susie Colbert, the daughter of James Logan Colbert. They were later divorced, and Allen married Susie's niece Elizabeth Love, who would later be at the center of the *Fisher v. Allen* case.³⁹ The importance of the Colbert family suggests that a lawsuit involving members of that family that went to the Mississippi High Court of Errors and Appeals would have attracted a significant amount of attention from Mississippi lawmakers. Many of these legislators were eagerly seeking to push the Chickasaws and the Colberts out of Mississippi as part of the removal process.

One of the lawmakers who likely paid attention was Thomas B.J. Hadley. His brother-in-law was Benjamin Fort Smith, a former United States Agent to the Chickasaws.⁴⁰ Smith was fired from his position after the Chickasaw chiefs and other leaders accused him of ten charges. These ranged from theft of Chickasaw funds to circulating false rumors through the community about chiefs Levi Colbert and Tish'-ho-mingo. A letter from John Bell to the Secretary of War James Barbour dated July 3rd, 1828 lists the ten charges and recommends removing Smith from his post due to the honest, well respected Chickasaws who were willing to go on record as witnesses to his abuses. The accusers included George, Levi, and James Colbert, as well as many full-blood Chiefs such as Tish'-ho-mingo, Tam'-she'-ko, and others. So many Chickasaws were willing to go on record accusing Smith of committing injustices

³⁸ Armstrong, 1.

³⁹ Ibid., 6.

⁴⁰ Benson, 113.

against them that John Bell felt it was not necessary to record them all.⁴¹ Thomas and Piety Smith Hadley were even more likely to follow the *Fisher v. Allen* lawsuit since the Colbert family was largely responsible for the firing of Benjamin. It is also quite possible that Benjamin would have told his sister Piety and her husband T.B.J. about his observations of Chickasaw culture during his seven-year tenure as Chickasaw Agent. It is plausible that they both learned the Chickasaw custom of separate husband and wife estates from him, only to be reminded nine years later of its potential advantages by the *Fisher v. Allen* trial.

The records surrounding the 1826 Treaty show Allen's personal involvement in resisting the sale of Chickasaw lands to the United States. If the Chickasaws sold their land, Allen would either have to relocate with them west of the Mississippi, or become eligible to be sued for his debt to Alexander Malcom. Thomas Hinds and John Coffee, the United States commissioners sent to negotiate the treaty with the Chickasaws, reported on October 28, 1826 that "very improper means have been used to defeat the objects of our government."⁴² Hinds and Coffee went on to say "that man who can advise his own son, in cold blood, to commit murder, is not only a great enemy to his people, but he is an enemy to mankind."⁴³ The name of this "enemy of mankind" as well as the source of these "improper means" is given in the testimony of Walter Bunch to the commissioners:

⁴¹ *John Bell to James Barbour*, July 3rd, 1828. www.flash.net/~kma/CHICL28.htm. (2 November 2003).

⁴² American State Papers, Senate, 19th Congress, 2nd session Indian Affairs: Volume 2, page 723. <http://memory.loc.gov/cgi-bin/ampage>. (15 September 2003).

⁴³ *Ibid.*, 723.

Walter Bunch, ...informs the commissioners that he was present at the house of old James Allen, ...when a conversation took place at the house of said Allen. ...some of the company gave an opinion that the Indians would sell their land; when old James Allen remarked, that his son George Allen, would kill the first chief that proposed to sell any of their lands, and that he (the old man) thought it right that he should do so. George Allen was present and heard the remark, but did not contradict what the old man his father had said, but seemed willing that the impression should go out as his father had spoken.⁴⁴

George Allen again threatened to kill the Chiefs over rumors concerning the possible sale of Chickasaw lands in 1828. Benjamin Fort Smith had spread rumors that several of the Chiefs had agreed to sell the Chickasaw lands to the United States, leaving out the stipulation that the agreement was not binding if the Chickasaws failed to find any land west of the Mississippi that they felt was adequate. A council was called to explain the situation at which George Allen said that “he had heard a great deal about the Indians having sold their country; that he had come up for the express purpose of hearing the matter explained; and that if it was not done satisfactorily, their heads (the Chiefs) would be off in a short time.”⁴⁵

James Allen had a personal interest in making sure that the Chickasaws refused to cooperate with the government’s designs. The state of Mississippi had threatened to extend its jurisdiction over the Indian Territories if the treaty negotiations failed to result in the cession of Chickasaw lands in exchange for lands west of the Mississippi River.⁴⁶ Allen may have feared that if any of the Chiefs sold their land, this would certainly bring American law into those areas. If this were to

⁴⁴ Ibid., 723.

⁴⁵ *John Bell to James Barbour*, July 3rd, 1828.

⁴⁶ American State Papers, Senate, 19th Congress, 2nd session Indian Affairs: Volume 2, 723.

occur, James Allen would be liable to pay off his debt to Alexander Malcom, which is exactly what happened when Mississippi extended its jurisdiction over Chickasaw territory in 1830.⁴⁷ Allen's and his son George's death threats may have been motivated by self-interest more than an interest in protecting their adopted nation's homeland.

The United States commissioners' interest in finding debtors like James Allen is evident in the treaty records. Hinds and Coffee stated that:

The citizens of the United States are compelled to discharge their obligations even to their red brethren; but they are totally exempt from the operations of our laws. Not only this, but their country affords a shelter to many of our own people, who take refuge in it to avoid their contracts and the penalties of criminal law. It is neither reasonable nor just that this state of things should continue, and you deceive yourselves greatly if you calculate on a long continuance of them.⁴⁸

It is interesting to note that the negotiators for the Chickasaws responded by stating, "You say that our country affords a shelter to many of your own people—a place of refuge to avoid their contracts. We are sorry to hear that such an interpretation has gone abroad among our white brethren; if there are any such characters amongst us, it is not known to the nation."⁴⁹ The names of two of the negotiators for the Chickasaw were Levi and Martin Colbert.⁵⁰ Both Colberts certainly would have known James and George Allen, as James Allen was formerly married to their sister and was

⁴⁷ *Alexander Malcom v. Debt James Allen*. April 1st, 1830. <http://www.flash.net/~kma/fisher.htm> (13 September 2003).

⁴⁸ American State Papers, Senate, 19th Congress, 2nd session Indian Affairs: Volume 2, page 723. <http://memory.loc.gov/cgi-bin/ampage> (15 September 2003).

⁴⁹ *Ibid.*, 725.

⁵⁰ *Ibid.*, 725.

currently (at the time of the treaty) married to their niece Elizabeth Allen, who was George's mother.

James and Elizabeth Allen exploited the Chickasaw tribal custom of separate husband and wife estates to their own advantage in the *Fisher v. Allen* lawsuit. If Armstrong's assertion is right that the *Deed of Gift* was forged to hide the assets of James and Elizabeth Allen from confiscation to pay the debt to Malcom, then it is not unreasonable to surmise that some of the property could have belonged to James Allen or at least been under his control. Allen and his son George also used their positions as members of the Chickasaw tribe to resist the sale of Chickasaw lands for their own self-interest, even going so far as to threaten to take the life of a chief if he agreed to sell Chickasaw lands. Arrell Gibson explains that the mixed blood clique, led by the Colbert family, regularly exploited tribal customs and institutions not only to please the full-blooded members of the tribe, but also to enhance their own financial and political power. Gibson states that most of the Chickasaws of mixed racial backgrounds took advantage of the five million acres of communal land. They were able to use as much land as they wanted without any cost and free of taxes. The Colberts and others:

...Dominated the business life of the nation and used their control of the governmental apparatus to legislate special economic privileges for their group. They were the principal slave owners and emulated the planters on the rim of their nation by developing productive farms and plantations. In their dress, furnishings, and general tone of living they sought to live as the whites did. Not all Chickasaw mixed bloods were members of the power clique. But the favored few—serious, energetic, and ambitious—imaginatively exploited the benefits of tribal citizenship and institutions.⁵¹

⁵¹ Gibson, 142-3.

James and Elizabeth Allen were very much a part of this “favored few” that “imaginatively exploited the benefits of tribal citizenship and institutions.”⁵² John F. H. Claiborne said in his 1880 book *Mississippi, as a Province, Territory, and State* that James Allen “...but from some disgust entered the Chickasaw nation, where he soon conciliated the favor of General [William] Colbert, a half-breed chief of large fortune.”⁵³ If the “disgust” that caused Allen to abandon his former life and move to the Chickasaw Nation was his debt to Malcom, then the ability to permanently evade American law by marrying into the tribe may have prompted his decision to remain.

The *Deed of Gift* from Elizabeth (Love) Allen to her 10 children demonstrates that she too prospered under the advantages of tribal membership. She gave a total of 25 slaves to her children, including the slave named Toney, reportedly on November 14, 1829. This was a considerable number of slaves for a woman or anyone else to have at the time, particularly when one considers that the slaves were not all of her property. Her estate records dated September 27,th 1837 indicate that at the time of her death her property* amounted to \$6,720.50. More than two thirds of it (\$4625 for 12 slaves) was in the form of slaves. Figuring the average price of a slave based on the value assigned to the 12 slaves in the 1837 estate records as being \$385.41, the

⁵² Ibid., 143.

⁵³ John F. H. Claiborne, *Mississippi as a Province, Territory, and State*, as quoted in Armstrong, 1.

* Land not included.

value of her gift to her children in 1829 would have been approximately \$9,635.42, and possibly much higher since the price of slaves varied greatly.⁵⁴

Elizabeth Allen's successful use of Chickasaw land rights is evident in her estate records and the records from her land sale to the United States in 1836 as part of the removal process. Chickasaw lands, which had traditionally been held communally, were divided up and sold at auction as individual allotments, made according to the number of people in each household and the number of slaves they owned. Buildings, other structures, and lands that were under cultivation or were otherwise "improved" were also appraised and factored into the value given to the person's property.⁵⁵ The 1836 Chickasaw land sales record lists Betsey Allen's land as having sold for \$6400 dollars at auction on December 10th, 1836. Only five other Chickasaws out of the approximately 400 that sold their land in 1836 did so for more than Elizabeth Allen,⁵⁶ suggesting that she had a comparatively large plantation under her cultivation and control. This shows that Elizabeth Allen's total worth, including the property she deeded to her children, was much closer to \$21,000, a considerable sum at the time. In today's inflation-adjusted dollars that amount is the equivalent of

⁵⁴ "A memorandum of the appraised property on the Estate of the deceased Mrs. Allen, Tockapulla September. 27th 1837," *Estate of Betsy [Love] Allen*, <http://www.flash.net/~kma/bloue.htm>, (13 September 2003).

⁵⁵ United States *Treaty with the Chickasaws 1832*. Articles 1-5. www.flash.net/~kma/t10.htm, (3 November 2003).

⁵⁶ *Mississippi Chickasaw Land Sales—1836*. http://www.flash.net/~kma/land_p_1.htm, (3 October, 2003).

slightly more than \$330,000.⁵⁷ This placed her and her husband among the wealthier citizens of the Chickasaw nation, and with their family connections part of the powerful group who used tribal membership to better themselves financially and politically.

Mississippi lawmakers may have taken their cue from the Allens by using the Chickasaw custom of separate estates to protect their own property from debts. By incorporating the custom into the Married Women's Property Act of 1839, legislators created an opportunity to shield their property, especially slave property, from confiscation for their debts. Senator Hadley claimed that he wanted to protect women's property and grant them greater property rights, but this does not appear to be true. An examination of the wording of the bill and the debate surrounding it suggest that he and others may have sought to serve their own interest rather than that of the women of Mississippi. Hadley suffered from financial concerns of his own, which may have led him to see the opportunities separate husband and wife estates offered. While the lawmakers obviously never stated that this was their intent, those who spoke out against the passage of the act did not miss the potential for fraud.

By examining the records surrounding the passage of the Married Women's Property Act of 1839, it will be shown that the primary opposition to it arose from those who saw the act as an opportunity for dishonest husbands to hide their assets in their wives' names, and thus protect that property from their creditors. The *Journal of the Senate of the State of Mississippi* shows that Senator Grayson twice attempted to

⁵⁷ *The Inflation Calculator*. S. Morgan Friedman 11 December 2000
<http://www.westegg.com/inflation/infl.cgi> (2 November 2003).

have an amendment attached to the act which attempted to reduce the potential for fraud by requiring married women to register their slaves. This would have prevented husbands from obtaining slaves and claiming they belonged to their wives, thus protecting their slaves from confiscation for their debts. Both attempts by Grayson to include such a protection against fraud in the act were voted down.⁵⁸ In the House of Representatives of the State of Mississippi a representative named Hoopes was somewhat more successful than Grayson in his attempt to include some protection against fraud. Hoopes introduced an amendment to the bill, which said, “*Be it further enacted*. That the provisions of this law shall not apply to any property, the title to which is derived from and through the husband after coverture.”⁵⁹ This amendment found its way into the 1839 act in the revised form of a proviso listed in the first section of the act that reads:

Section 1. Be it enacted by the Legislature of the State of Mississippi, That any married woman may become seized or possessed of any property, real or personal, by direct-bequest, demise, gift, purchase, or distribution, in her own name, and as of her own property: Provided, the same does not come from her husband after coverture.^{60*}

This provision sought to prevent fraud by prohibiting husbands from simply transferring all of their assets into their wives’ names, thus sheltering them from the husbands’ debts. The revised version of Mr. Hoopes’s amendment leaves a loophole where husbands would be able to transfer their property to their wives indirectly. By

⁵⁸ *Journal of the Senate of the State of Mississippi*, 264. Jackson, MS. Mississippi Department of Archives and History. Roll #5087.

⁵⁹ *Journal of the House of Representatives of the State of Mississippi*, 1839, 438. Jackson, MS. Mississippi Department of Archives and History. Roll #4125.

⁶⁰ *Laws of Mississippi*, 1839, Chapter 46, section 1, 72.

striking out the “and through” portion of the amendment, the act only prohibited extending debt protection to property given directly from the husband to the wife.

Senator Puckett introduced another amendment which read “[t]hat hereafter married women shall exercise the elective franchise, work on roads, do jury and militia service, and go to mill.”⁶¹ One might have expected such a radical amendment to be a sarcastic gesture from an opponent of the bill, but Mr. Puckett, whose amendment was rejected, actually did vote in favor of the act*. This suggests that either his amendment may have been a serious attempt at granting married women the right to vote, among other things, eighty years before the passage of the 19th Amendment, or that something else less sincere was going on. Earlier in the same legislative session, a bill was introduced into the legislature for the relief of T.B.J. Hadley and Samuel M. Puckett. According to Moncrief the two had issued three joint promissory notes for a little over \$400 each.⁶² Viewed in this light, it appears more likely that Puckett’s sarcastic remark was mocking his and Hadley’s own intentions by lampooning the rights they were claimed to be extending to women.

* Underlining was done by the author for emphasis.

⁶¹ *Journal of the House*, 438.

* Another interesting fact is that Samuel Gholson, who defended Susan Allen in the 1837 *Fisher v. Allen* case, was a representative in 1839 who voted against the passage of the Married Women’s Property Act. While we cannot know for certain the reasons behind Gholson’s actions, it may be that his involvement in the case showed him the potential for abuse the passage of this act would create for husbands like James Allen. He may also have simply agreed to take the case as a means a making a living, regardless of his personal feelings about the rights of women.

⁶² Moncrief, 117-8.

The March 16, 1839 issue of the *Aberdeen Whig and North Mississippi Advocate* contains a partial transcript of the closed committee debates surrounding the passage of the 1839 act. While opponents of the act do attack the possible effect on husband and wife relations, their primary objections focus on the potential for defrauding creditors. Senator Grayson stated that “the bill would have a pernicious effect...” and “the 3rd section involved a degree of indeliency unheard of in any country.”⁶³ Grayson went on to say “if this bill becomes law, no married man can be compelled to pay his debts—for the very obnoxious reason, that within six months, the wives will have all the property in their own right, exempt from the husbands debt.”⁶⁴ The third section of the Married Women’s Property Act that Grayson found so objectionable gave a married woman’s property acquired after marriage the same protection as property the woman had when she entered into the marriage.⁶⁵ This offered dishonest husbands a chance to give their property to a relative or trusted friend and then have that person transfer it to the his wife’s name as a gift, thus retaining control of the property and sheltering it from debts.

Senator Mathews objected to the bill on these very grounds, saying “a man will have it in his power to defraud his creditors, by selling his property and putting the money into the hands of a friend to buy a plantation and negroes to be given to his wife. The injury to be inflicted by this bill, upon creditors, is incalculable; and the

⁶³ *Aberdeen Whig and North Mississippi Advocate*, March 3rd, 1839. Jackson, MS. Mississippi Department of Archives and History.

⁶⁴ *Ibid.*

⁶⁵ *Laws of Mississippi*, 1839, Chapter 46, section 3, 73.

credit of Mississippi is, in all conscience, low enough already.”⁶⁶ An article originally printed in the *Boston Post* and then reprinted in *The Mississippian* states that Representative Robert Josselyn opposed the bill for the same reason, stating that “it affords great facilities to dishonest people for cheating their creditors. So far as we can understand the provisions of the bill, they appear to be very injurious, and likely to cause great evils.”⁶⁷

Mississippi husbands would not have anything to lose by indirectly transferring their assets to their wives’ names. One aspect of the 1839 act that diverges from the Chickasaw tribal law is that “control and management of all such slaves, the direction of their labor, and the receipt of their productions, thereof, shall remain to the husband, agreeably to the laws heretofore in force.”⁶⁸ According to the Supreme Court records, the Chickasaw marital law that granted Elizabeth Allen separate control and ownership of her property gave her “a right to own separate property, to dispose of it at pleasure, to create debts and in most things act as a *feme sole*.”⁶⁹ This means that Chickasaw women, unlike Euro-American Mississippi women before or after the passage of the 1839 act, retained legal control of their property.

The lack of actual economic rights given to married women in the bill is intriguing considering the language used by Senator Hadley in his response to the opposition to the bill:

⁶⁶ *Aberdeen Whig and North Mississippi Advocate*, March 16th, 1839.

⁶⁷ *The Mississippian*, April 26, 1839. Jackson, MS. Mississippi Department of Archives and History.

⁶⁸ *Laws of Mississippi*, 1839, Chapter 46, section 4, 73.

⁶⁹ *Fisher v. Allen*, 2 Howard 1837, 615.

...In an honest inquiry after truth and a sound policy, we shall find nothing in this bill to warrant any fears...shall we, in this proud Republic, refuse to secure to them the certain possession of property to which they have as just a claim? Is there a wish of such gross injustice in the mind of any man that he would behold from woman the shield of protection which this bill proposes? Does man delight in woman's happiness? Then give them the plighted faith of our legislation, that they shall possess and enjoy the means of their own pleasure. I would sir, secure to them the product of their own labor—I would secure to them the possession of the property given them by fond parents or relatives. Secure this, sir—'tis all I ask.⁷⁰

In all of Hadley's flowery speech about elevating the status of women he does not once refute the possible use of the act as a means of hiding property from a husband's creditors. If Hadley were truly interested in the rights of women, why was the 1839 act written so as to re-enforce the traditional authority of the husband to control, manage, and receive the profits from his wife's property? While Hadley may have supported advancing the rights of women, it appears more likely that he saw the passage of this act as a means of protecting his own financial interests.

The absence of any specific reference to the *Fisher v. Allen* trial in the legislative records surrounding the passage of the 1839 act presents an obstacle to establishing a direct link between the two. The fact that no elected official in Mississippi would have wanted to go on record saying that they proposed to adopt the marital customs of the Chickasaws is no surprise considering the attitudes of most whites toward Native Americans during the removal period.* The fact that the *Fisher v. Allen* decision was rendered during the Panic of 1837 and only two years before the passage of the act suggests that the case was quite likely a strong influence in the passage of the act. In addition to the chronological proximity of the two events is the personal interest the Hadleys had in the *Fisher v. Allen* case due to Benjamin Smith's

⁷⁰ *Aberdeen Whig and North Mississippi Advocate*, March 16th, 1839.

conflicts with the Colbert family. Hadley's apparent financial concerns only further support the idea that he would personally benefit from the legislation.

Mississippi lawmakers, like Senator T.B.J. Hadley, hurt by the Panic of 1837, saw an opportunity to protect their own interests by using part of the Chickasaw tribal law found in the *Fisher v. Allen* decision and applying it to all married women in Mississippi by the passage of the Married Women's Property Act of 1839. While the 1839 act was limited in the economic rights it extended to women compared to later legislation, the act was nonetheless revolutionary for a time when married women in the US had no legal protections for their property. The significance of the 1839 act is even greater when one considers the number of similar bills passed by other states in the years following its enactment. Given the importance of this act to the field of women's property law, the Chickasaw tribal law that served as its basis needs to be given its acknowledged for its role as the model used by American lawmakers when they established the first married women's property law in the US.

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Secondary Sources

Armstrong, Kerry M. "Was it James or John Allen?" Chickasaw Historical Research Web site, n. d., <www.flash.net/~kma/allen.htm>, (13 September 2003), 3.

Kerry Armstrong discusses the events that lead up to the *Fisher v. Allen* trial as well as clearing up the confusion surrounding the true identity of Elizabeth Allen's husband. Armstrong's work is unpublished, except for on a web site he created called the Chickasaw Historical Research Site. Armstrong is a member of the Chickasaw tribe and a historian. He has published at least three volumes of Chickasaw historical documents in addition to the large number contained on his site. Without the materials made available on the Chickasaw Historical Research Site this paper might not have been possible.

Benson, Megan. "Fisher v. Allen: the Southern Origins of the Married Women's Property Acts." *Journal of Southern Legal History*. (1997-98): 97-122.

Megan Benson's essay discusses the causes behind the Justices Sharkey and Smith's decisions in the *Fisher v. Allen* lawsuit. Benson argues that in order to ensure a speedy removal of the Chickasaws, the Supreme Court ruled in favor of Allen to reverse the protection of coverture given to Chickasaw women by the United States Treaty with the Chickasaws of 1834. She states that because of the matrilineal traditions of the Chickasaws, women within the tribe were going to be the primary landholders. Requiring Chickasaw women to pass privy examinations before they could have sold their land would have greatly slowed the removal process. Benson further credits *Fisher v. Allen* with providing the common law precedent needed to pass the Married Women's Property Act of 1839.

Gibson, Arrell M. *The Chickasaws*. Norman, Oklahoma: University of Oklahoma Press, 1971.

Arrell M. Gibson sheds light on the prevalence of slavery in Chickasaw culture and explores the reaction of Chickasaws to the events surrounding the extension of Mississippi jurisdiction over their territory. Gibson discusses the signing and implementation of the Franklin Treaty that led to the relocation of the Chickasaw Nation to Oklahoma. This source will be used as background information on the importance of slavery in Chickasaw culture and information on the events surrounding Mississippi's extension of state jurisdiction over the Chickasaw territory.

Moncrief, Sandra. "The Mississippi Married Women's Property Act of 1839." *Journal of Mississippi History* 47. No. 2(1985): 110-125.

Sandra Moncrief discusses the *Fisher v Allen* trial and the Married Women's Property act of 1839.

While Moncrief discusses both the trial and the 1839 act, she does not establish a direct connection between the two. Instead, she credits the passage of the 1839 act to possible ulterior motives on the part of the senator who introduced the bill and his wife. Moncrief's piece will be used as both a scholarly and historiographic source.

Younger, Judith T. "Marital Regimes: A Story of Compromise and Demoralization, Together w/ Criticism and Suggestions for Reform." *Cornell Law Review* 67. No. 1(1981): 45-102.

Judith Younger's article examines the legal history behind women's property rights. She examines the *Fisher v Allen* trial and the Mississippi Married Women's Property Act of 1839, crediting *Fisher v Allen* as the basis for the 1839 act. She does not however, discuss the Chickasaw customs that led to the ruling in the trial, only its outcome in the form of the 1839 act.

Primary Sources

“A memorandum of the appraised property on the Estate of the deceased Mrs. Allen, Tockapulla September. 27th 1837,” *Estate of Betsy [Love] Allen*, <http://www.flash.net/~kma/bllove.htm>, (13 September 2003).

Record of the appraised value of Elizabeth Allen’s slaves and other moveable property at the time of her death. This is useful in showing the comparative wealth of the Allen family and demonstrating their close connection to the Colbert family.

Aberdeen Whig and North Mississippi Advocate, 16 March 1839. Jackson, MS. Mississippi Department of Archives and History.

This newspaper article serves as a record of the debates that took place in committee surrounding the Married Women’s Property Act of 1839. It will be used in conjunction with the senate and house records to better understand the origins of and objections to the 1839 act.

Alexander Malcom v. Debt James Allen. April 1st, 1830. <http://www.flash.net/~kma/fisher.htm> (13 September 2003).

This is a record of the lawsuit against James Allen, in which John Fisher served as Allen’s attorney. Allen promised to pay Fisher at a later date for his services in this trial, Allen never did, forcing Fisher to file suit against him.

American State Papers, Senate, 19th Congress 2nd Session Indian Affairs: Volume 2, 723-27. <http://memory.loc.gov/cgi-bin/ampage>, (15 September 2003).

These government documents serve as a record of the events surrounding the 1826 treaty negotiations. James and George Allen are implicated as threatening to murder any Chief who considered selling their land to the US.

Deed of Gift from Betsy Love to Sally Allen and Others, 14 Nov 1829 [Deed Book #2, Ponotoc Co., MS, pp, 196-197] *Estate of Betsy [Love] Allen*, <http://www.flash.net/~kma/bllove.htm>, (13 September 2003).

This is the Deed of Gift that gave possession of the slave Toney from Elizabeth Allen to her daughter Susan. It was one of the central pieces of evidence in the *Fisher v. Allen* case. This also demonstrates the wealth of the Allen family.

Fisher v Allen, 2 Howard (Miss.), 611-617. 1837. Jackson, MS. Mississippi Department of Justice, Supreme Court Library.

This record contains a summary of the Fisher v Allen trial, verdict, and background information on the previous trial before it was referred to the Mississippi High Court of Errors and Appeals. As no record apparently exists of the first trial, what information we know about it must be obtained through this record. The facts and ruling in the case will be compared with the 1839 act as it appears in the Mississippi Law Code to analyze similarities between the two.

Fisher v. James Allen, Circuit court Tuesday 3rd May 1831, Monroe Co., MS, Court Journal [Journal is not marked.] <http://www.flash.net/~kma/Fisher.htm>. (13 September 2003).

This is a record of the first Fisher v. Allen trial that James Allen failed to show up for.

Fisher v. Susan Allen, June 25, 1831, Monroe Co., MS, [unmarked court journal, pp. 106-08.] <http://www.flash.net/~kma/Fisher.htm>. (13 September 2003).

This court record is evidence of George and Susan Allen claim that the slave Toney was Susan Allen's property and not that of her father James.

John Fisher v. Inter Susan Allen, Circuit Court towit November Term 1831, Monroe Co., MS, [unmarked court journal, pp. 106-08.] <http://www.flash.net/~kma/Fisher.htm>. (13 September 2003).

This document shows that James Colbert and George Allen posted a joint bond for the return of the slave Toney. Toney was the property in question in the *Fisher v. Allen* suit. This is used to explain the events of the case and also to demonstrate the close relationship between the Allen and Colbert families.

The Inflation Calculator. S. Morgan Friedman 11 December 2000 <http://www.westegg.com/inflation/infl.cgi> (2 November 2003).

This web site offers a user-friendly calculator for converting the value of a given dollar amount from the 1800's and before to what its monetary equivalent would be today.

John Bell to James Barbour, July 3rd, 1828. www.flash.net/~kma/CHICL_28.htm. (2 November 2003).

John Bell writes to James Barbour, the Secretary of War, listing the charges against Chickasaw Agent Benjamin Fort Smith. Smith was the brother of Piety Smith Hadley, the influential wife of Senator Thomas B.J. Hadley. This letter is used to show the connections between the Hadleys and the Colberts.

Journal of the House of Representatives of the State of Mississippi, 1839. Jackson, MS. Mississippi Department of Archives and History. Roll #4125.

The journal of the House of Representatives will be examined to look for connections between it and the 1837 court case. The lists of persons who voted for and against the 1839 act will also be examined to determine what relationship the case and the act may have. The debates and suggested ryders will also be explored in order to determine what motives the representatives had for voting for or against the act.

Journal of the Senate of the State of Mississippi, 1839. Jackson, MS. Mississippi Department of Archives and History. Roll #5087.

The journal of the Senate will be examined to look for connections between it and the 1837 court case. The lists of persons who voted for and against the 1839 act will also be examined to determine what relationship the case and the act may have. The debates and suggested ryders will also be explored in order to determine what motives the senators had for voting for or against the act.

Laws of Mississippi, 1839. Jackson, MS. Mississippi Department of Archives and History. Roll #2502.

This document is the actual Married Women's Property Act of 1839 itself. The wording and various sections of the bill will be examined and compared to the court records relating to the *Fisher v Allen* trial to determine what connections might exist between the two.

McGee, Malcom. Interviewed by Lyman Draper, approximately 1841. <http://www.flash.net/~kma/Mcgee.htm>. (25 September 2003).

This interview was conducted by historian Lyman Draper sometime before McGee's death in 1848. A letter which accompanies the Lyman's notes states that the interview took place in 1841. McGee was the main interpreter for the Chickasaws for many years.

Mississippi Chickasaw Land Sales—1836. http://www.flash.net/~kma/land_p_1.htm, (3 October, 2003).

This record is a list of all the Chickasaw land sales in 1836. The Chickasaw lands were surveyed and parceled out to individuals based on what portion of it they had cultivated, in order to fully compensate those individuals by selling their land at auction, instead of selling the entire area directly to the US government. This record further shows that Elizabeth Allen's property sold for more than almost anyone else's that year.

The Mississippian, 26 April 1839. Jackson, MS. Mississippi Department of Archives and History.

This article deals with the passage of the Married Women's Property Act of 1839 and the public reaction to it. It offers insight into public criticisms and suspicions about the bill and the extent to which the passage of the act was publicized. The article's tagline indicates that it was originally printed in the *Boston Globe* before being reprinted in *The Mississippian*.

A Republication of the Project of the Civil Code of Louisiana of 1825. (New Orleans: Thos. J. Moran's Sons) 1937.

This reprinted edition of the 1825 Louisiana Civil Code was published at the behest of the Louisiana legislature. The Louisiana Civil Code granted separate husband and wife estates and was a possible influence on the 1839 Married Women's Property Act. Thomas and Piety Hadley may have lived in Louisiana for a short time around 1830 and possibly learned about the code then.

United States Treaty with the Chickasaws-1832. www.flash.net/~kma/t10.htm, (3 November 2003).

The Chickasaws agreed to exchange their lands for lands west of the Mississippi by signing this agreement. The treaty spells out how the removal would occur, granting individual allotments to each tribal member and compensating individuals for the improvements they had made to the land.

United States Treaty with the Chickasaws-1834. www.flash.net/~kma/t12.htm (3 November 03).

This treaty extended coverture to Chickasaw women in an effort to protect them from deceitful land speculators. The *Fisher v. Allen* decision later revoked this protection. The treaty is used in this essay to establish the identity of Benjamin Love, who testified to the nature of Chickasaw marital customs during the *Fisher v. Allen* trial.